

REMARKS/ARGUMENTS

Claims 1-44 are pending. Claims 1, 17, and 31 have been amended. The amendments are supported by the application as filed, for example at page 43, line 6 through page 47, line 13. No new matter has been added.

Interview Summary

Applicant's attorney thanks the Examiner for discussing the application in a telephone interview on January 28, 2010.

In the interview, similarities between the pending claims and the claims allowed in related, co-pending U.S. Patent Application No. 11/715,735 (hereinafter "the '735 application") were discussed. Claim 1 of the '735 application recites, in pertinent part:

automatically and dynamically altering a performance policy of the portion of the network to conform with the predetermined criteria in response to a determination that the performance of the portion of said network fails to conform with the predetermined criteria;

The Examiner suggested amending the claims of the present application to more closely match the above-quoted portion of claim 1 of the '735 application in order to further patentably distinguish the cited references. Accordingly, claim 1 of this application has been amended to recite:

the administration system configured to **automatically and dynamically alter a performance policy of the portion of the network to conform with the predetermined** application specific performance **criteria in response to a determination that the performance of the portion of the network fails to conform with the predetermined** application specific performance **criteria;**

(Emphasis added).

If there are any further issues barring the timely issuance of a Notice of Allowance for this application, the Examiner is respectfully requested to call the undersigned attorney at the telephone number set forth below.

Rejection of the Claims under 35 U.S.C. § 112, ¶ 1

Claims 1-44 were rejected under 35 U.S.C. § 112, ¶1 as failing to comply with the written description requirement.

Specifically, the Office Action states: “The examiner asserts because applicant’s specification does not provide support for specified bandwidth usage that new matter has been added.” (Page 16, lines 17-18).

Applicant’s attorney respectfully disagrees that the specification does not provide support for criteria including a specified bandwidth usage. However, the claims as amended no longer recite the phrase “specified bandwidth usage.”

Accordingly, it is respectfully submitted that the rejection of claims 1-44 under 35 U.S.C. § 112 ¶1 should be withdrawn.

Rejection of the Claims under 35 U.S.C. § 112, ¶2

Claims 31-44 were rejected under 35 U.S.C. § 112, ¶2 as being indefinite.

It is respectfully submitted that claims 31-44 are not indefinite for at least the following reasons.

The Office Action correctly points out that certain software components described in the specification map to one or more of the means recited in claim 31 according to at least one interpretation of claim 31. In at least one embodiment, one or more of the means recited in claims 31-44 may be implemented as software executable on one or more processors. (Page 13, line 25 through page 14, line 9).

However, this is not the only mapping of the means elements to corresponding structure in the specification, and it is respectfully submitted that the existence of different mappings of the means elements of a given claim does not render that claim indefinite. Moreover, when interpreting claims under 35 U.S.C. § 112 ¶ 6, the structure corresponding to a means can comprise one or more blocks of software code.¹ Therefore, each of the means recited in claims 31-44 need not map to a separate referenced hardware element in the drawings.

However, in order to expedite prosecution, claim 31 has been amended to recite “a hardware network device operable to dynamically receive information related to a first subset of network elements, said first subset of network elements including at least one network element of the first plurality of network elements.” Applicant’s attorney respectfully submits that the specification supports implementing one or more of the means using a single hardware element. For example, the application as filed states that “the term ‘network element’ refers to any hardware or software component of the adaptive feedback-based network of the present invention, including control elements.” (Page 13, lines 29-31).

Thus, it is respectfully requested that the rejection of claims 31-43 under 35 U.S.C. § 112 be withdrawn.

Rejection of the Claims under 35 U.S.C. § 103

Claims 17-20, 23-25, 28-34, 37-39, and 42-44 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, U.S. Patent No. 6,405,250 (hereinafter “Lin”), Liao, U.S. Patent No. 7,185,081 (hereinafter “Liao”), and Swift et al., U.S. Patent No. 6,912,575 (hereinafter “Swift”). Claims 1-6, 9-11, and 13-16 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Swift, and Subramanian, U.S. Patent No. 5,519,707 (hereinafter “Subramanian”). Claim 12 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Swift, Subramanian, and Winokur, U.S. Patent No. 5,483,637 (hereinafter “Winokur”). Claims 26-27 and 40-41 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Swift, and Winokur. Claim 7 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Swift, Subramanian, and Azarmi, U.S. Patent No. 5,905,715 (hereinafter “Azarmi”). Claim 8 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Swift, Subramanian, and Ross, GB2318479 (hereinafter “Ross”). Claims 21 and 35 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Swift, and Azarmi. Claim 22 was rejected under 35 U.S.C. § 103 as obvious in view of Lin, Liao, Swift, and Ross. Claim 36 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Swift, and Ross. Claims 26 and 40-41 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, and Winokur. Claim 8 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Subramanian, Liao, and Ross, GB2318479 (hereinafter “Ross”). Claims 21 and 35 were rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, and Azarmi. Claim 22 was rejected under 35 U.S.C. § 103(a) as obvious in view of Lin, Liao, Winokur, and Ross.

As discussed herein and in the above-referenced telephone interview, the pending claims are amended as suggested by the Examiner to recite features to further patentably distinguish the cited references. Accordingly, it is respectfully submitted that the claims are not obvious in view of the cited references.

Therefore, it is respectfully requested that the rejection to the claims under 35 U.S.C. § 103(a) be withdrawn.

¹ Aristocrat Technologies v. International Game Technology, 543 F.3d 657 (Fed. Cir. 2008); WMS Gaming, Inc. v. International Game Technology, 184 F.3d 1339 (Fed. Cir. 1999).

Conclusion

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set forth below.

Applicant does not believe that any additional fees are required to facilitate the filing of this Amendment. However, if it is determined that such fees are due, please charge such additional fees to Deposit Account No. 504480 (Order No. CISC120C1).

Respectfully submitted,
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